

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 17-20386-2

v.

Hon. George Caram Steeh

RAFAEL TESTA-VEGA D-2,

Defendant.

_____ /

ORDER DENYING DEFENDANT'S MOTION
FOR COMPASSIONATE RELEASE [ECF NO. 57]

Defendant Rafael Testa-Vega seeks compassionate release from prison, relief that the government opposes. For the reasons explained below, the Court denies defendant's motion.

On September 18, 2017, Testa-Vega entered a plea of guilty to conspiracy to distribute controlled substances. This Court sentenced him to 120 months in prison. Testa-Vega is currently 26 years old and has a projected release date of January 15, 2026. Immigrations and Customs Enforcement (ICE) has lodged a detainer against Testa-Vega because he is an illegal immigrant and he will be deported to Mexico upon his release from custody. Testa-Vega seeks compassionate release due to a medical

condition, specifically asthma, and his inability to take care of his health in prison due to the Covid-19 pandemic generally.

Testa-Vega describes having asthma as a child and using an inhaler until he was 18 years old, at which time his asthma went away. He was diagnosed with Covid-19 in April 2020, while he was incarcerated at FCI Milan. He recovered from Covid-19 and about a month later his asthma returned. On September 3, 2020 Testa-Vega was transferred to North Lake Correctional Facility in Baldwin, Michigan, where he is currently housed. Testa-Vega's medical records show that he was diagnosed with mild intermittent asthma on February 11, 2021, for which he has been prescribed albuterol, as needed. He complains that there is no medical specialist at his facility and that he has insufficient access to fresh air on regular basis due to pandemic-related lock downs.

Ordinarily, a district court "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. § 3582(c). The statute provides for a limited exception, known as "compassionate release," which is governed by 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act of 2018. Prior to the effective date of the First Step Act, only the Bureau of Prisons could move for compassionate release, upon a finding that extraordinary and compelling reasons supported a sentence reduction. The First Step Act

amended 18 U.S.C. § 3582(c)(1)(A) to permit a defendant to seek compassionate release on his own behalf. This section now allows for judicial modification of an imposed term of imprisonment when three criteria have been met: (1) the defendant has first exhausted all administrative remedies with the Bureau of Prisons or at least allowed the BOP 30 days to act on his request before seeking compassionate release on his own motion; (2) extraordinary and compelling reasons warrant such a reduction; and (3) the relevant sentencing factors listed in 18 U.S.C. § 3553(a) have been considered. 18 U.S.C. § 3582(c)(1)(A)(i).

I. Exhaustion of Administrative Remedies

A defendant is allowed to file a motion for compassionate release after he has “fully exhausted all administrative rights to appeal a failure of the BOP to bring a motion. . .” or “30 days after the date the warden received a request for compassionate release.” 18 U.S.C. § 3582(c)(1)(A). Testa-Vega submitted a request for compassionate release to the warden at Milan on July 1, 2020. The request, which was made before he was diagnosed with mild intermittent asthma, was rejected on July 22, 2020. Testa-Vega has exhausted his administrative remedies.

II. Extraordinary and Compelling Reason

Testa-Vega has mild asthma which is managed with medication. While moderate-to-severe asthma is a condition that the CDC has identified as a risk factor that might put people at an increased risk of illness from Covid-19, mild asthma is not listed as a CDC risk factor for severe illness. Moreover, Testa-Vega has already had Covid-19, and during that time, he did not experience severe illness and appears to have recovered relatively quickly. After experiencing flu-like symptoms, such as coughing, fever, weakness and loss of appetite, beginning on April 6, 2020, Testa-Vega tested positive for Covid-19 on April 9, 2020. (Exh.1: 2020 BOP Medical Records) (sealed). He was quarantined, and by April 11, 2020, he was asymptomatic. *Id.* On April 13, 2020, he was released from isolation, and his case was confirmed “resolved” on April 21, 2020. *Id.*

Having tested positive for the virus, Testa-Vega likely has immunity for several months after recovering from the infection. In the meantime, the BOP is in the process of vaccinating consenting staff and inmates at its facilities. The Court also notes that at age 26, Testa-Vega does not face the same elevated risk from Covid-19 that the elderly do.

The Court concludes that Testa-Vega has not presented an extraordinary and compelling reason for release. The Sixth Circuit has

stated that “district courts may deny compassionate-release motions when any of the three prerequisites listed in § 3582(c)(1)(A) is lacking and do not need to address the others.” *Elias*, 984 F.3d at 519. Therefore, the Court does not have to address the relevant sentencing factors listed in § 3553(a).

For the reasons stated above, IT IS HEREBY ORDERED that Testa-Vega’s motion (ECF No. 57) is DENIED.

Dated: April 9, 2021

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on April 9, 2021, by electronic and/or ordinary mail and also on Rafael Testa-Vega #55690-039, North Lake Correctional Institution, P.O. Box 1500, Baldwin, MI 49304.

s/Leanne Hosking
Deputy Clerk